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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2012 APR 9 PM 3 40

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF,
LLC, AGAINST JOHNSON UTILITIES,
LLC.

DOCKET NO. WS-02987A-08-0049

NOTICE OF FILING
PLEADINGS, RULINGS, MINUTE
ENTRIES AND ORDERS FILED IN
SUPERIOR COURT CASE SINCE
JANUARY 27, 2012

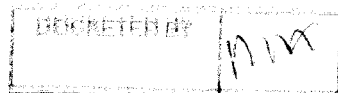
In the Amended Procedural Order dated February 17, 2012, the administrative law judge ordered the parties to docket copies of "documents, rulings, minute entries, or orders filed in or issued by [the] Superior Court" in *Johnson Utilities, LLC, et al. v. Swing First Golf, LLC, et al.* (Cause No. CV2008-000141). In compliance with this order, Johnson Utilities LLC hereby files copies of Plaintiffs' Motion for Reduction of Unsupported and Excessive Damages, and Stipulation and Joint Motion to Stay Deadlines for Applications for Attorneys' Fees.

RESPECTFULLY submitted this 9th day of April, 2012.

BROWNSTEIN HYATT FARBER SCHRECK
LLP

Arizona Corporation Commission
DOCKETED

APR - 9 2012



Jeffrey W. Crockett, Esq.
One East Washington Street, Suite 2400
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Attorneys for Johnson Utilities, LLC

1 ORIGINAL and thirteen (13) copies of the
2 foregoing filed this 9th day of April, 2012, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 9th day of April, 2012, to:

9 Yvette B. Kinsey, Administrative Law Judge
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Robin Mitchell, Chief Counsel
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19 Steve Olea, Director
20 Utilities Division
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23 Phoenix, Arizona 85007

24 COPY of the foregoing sent via e-mail
25 this 9th day of April, 2012, to:

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17 Attorneys for Plaintiffs/Counterdefendants

18 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

19 **IN AND FOR THE COUNTY OF MARICOPA**

20 JOHNSON UTILITIES, LLC; THE CLUB
21 AT OASIS, LLC; GEORGE H. JOHNSON;
22 JANA S. JOHNSON; BRIAN F.
23 TOMPSETT,

24 Plaintiffs,

25 v.

26 SWING FIRST GOLF, LLC; DAVID
ASHTON,

Defendants.

SWING FIRST GOLF, LLC, an Arizona
limited liability company; DAVID ASHTON
and JANE DOE ASHTON, husband and
wife,

Counterclaimants,

v.

JOHNSON UTILITIES, LLC, d/b/a
JOHNSON UTILITIES COMPANY, an
Arizona limited liability company; THE

Cause No. CV2008-000141

**PLAINTIFFS' MOTION FOR
REDUCTION OF UNSUPPORTED
AND EXCESSIVE DAMAGES**

(Assigned to the Honorable John Rea)

ORAL ARGUMENT REQUESTED

1 CLUB AT OASIS, LLC, an Arizona limited
2 liability company; GEORGE H. JOHNSON
3 and JANA S. JOHNSON, husband and wife;
BRIAN F. TOMPSETT and JANE DOE
TOMPSETT, husband and wife,

4 Counterdefendants.

5
6 Pursuant to Rule 59(i),¹ Arizona Rules of Civil Procedure, Plaintiff/ Counterdefendant
7 Johnson Utilities, LLC hereby moves for a reduction in the amount of damages assessed in the
8 Jury's March 19, 2012 verdict on Swing First's claim for breach of contract. The jury's award
9 on that claim was completely unsupported by any evidence, and cannot be permitted to stand.
10

11 In Verdict Form 2(a) (concerning Swing First Golf's claim for breach of contract – tariff
12 rates), the jury awarded damages in the amount of \$1,000,000.00 despite the fact that no
13 evidence was ever presented by either party supporting even a fraction of that figure. Indeed,
14 Swing First Golf, under its own theory of its claims, only requested damages on that claim in the
15 sum-certain amount of \$73,572.00. As such, the amount of damages awarded by the jury
16 regarding Swing First Golf's claim for breach of contract is excessive, unsupported, and must be
17 remitted. The verdict amount must be remitted to *no more* than the amount sought by Swing
18 First of \$73,572.00.
19
20

21 MEMORANDUM OF POINTS AND AUTHORITIES

22 Under Rule 59, in deciding a motion for new trial on the basis of excessive damages, the
23 trial court is entitled to evaluate the credibility of witnesses and weigh the evidence to determine
24 if the verdict is against the weight of the evidence and contrary to substantial justice. *See Reeves*
25

26 ¹ Plaintiff expressly reserves the right to bring any and all other appropriate Motions under Rule 50 and the remainder of Rule 59 within the time limits set forth in the Rules of Procedure.

1 v. *Markle*, 119 Ariz. 159, 163-64, 579 P.2d 1382, 1386-87 (1978). Arizona appellate courts
2 have held that when a trial court considers a motion for new trial, it has the power to consider
3 witness testimony and weigh the evidence to determine whether or not a new trial would be
4 appropriate. "Because a motion for a new trial based on the claim that the verdict is contrary to
5 the weight of the evidence involves weighing evidence and determining the credibility of
6 witnesses, the trial court's ruling on such a motion will not be reversed on appeal absent an
7 abuse of discretion." See *State v. Tubbs*, 155 Ariz. 533, 535, 747 P.2d 1232, 1234 (App. 1987);
8 see also *McBride v. Kieckhefer Associates, Inc.*, 228 Ariz. 262, 265 P.3d 1061, 1066 (Div. 1
9 2011).

12 In situations such as this case, where the jury awards excessive damages (exemplified by
13 a jury award that is more than 13 times the amount requested), remittitur is an appropriate
14 remedy. In a Rule 59 motion for remittitur, the trial court is afforded "[t]he greatest possible
15 discretion because, like the jury, [the trial court] has had the opportunity to hear the evidence
16 and observe the demeanor of witnesses." *In re Estate of Hanscome*, 227 Ariz. 158, 162-163,
17 254 P.3d 397, 401 - 402 (Div. 1 2011) (quoting *Mammo v. State*, 138 Ariz. 528, 533, 254 P.3d
18 397 (Div.1 1984)). A trial judge sits as a "thirteenth juror" (i.e. ninth juror in a civil case) when
19 ruling on a motion for new trial. *McBride v. Kieckhefer Associates, Inc.*, 228 Ariz. 262, 265 P.3d
20 1061, 1066 (Div. 1 2011). Because the trial judge "sees the witnesses, hears the testimony, and
21 has a special perspective on the relationship between the evidence and the verdict which cannot
22 be recreated by a reviewing court from the printed record," the judge is accorded broad
23 discretion in granting a new trial. *Id.*

1 Remittitur is proper where there is a lack of evidence to support the damages awarded or
2 a clear indication that the jury misapplied the principles governing damages. *Young Candy &*
3 *Tobacco Co. v. Montoya*, 91 Ariz. 363, 370, 372 P.2d 703, 707 (1962). *See also Florey v.*
4 *Silvercress Industries, Inc.*, 130 Ariz. 15, 633 P.2d 424 (1981). Likewise, where damages
5 awarded are "beyond all measure, unreasonable, and outrageous," a remittitur should be
6 awarded. *See Young Candy & Tobacco Co., v. Montoya*, 91 Ariz. 363, 370, 372 P.2d 703
7 (1962) (*en banc*). Indeed, the text of Rule 59(i) provides as follows:
8
9

10 When a motion for new trial is made upon the ground that the
11 damages awarded are either excessive or insufficient, the court may
12 grant the new trial conditionally upon the filing within a fixed period
13 of time of a statement by the party adversely affected by reduction or
14 increase of damages accepting that amount of damages which the
15 court shall designate. If such a statement is filed within the
16 prescribed time, the motion for new trial shall be regarded denied as
17 of such filing . . . If the conditional order of the court requires a
18 reduction of or increase in damages, then the new trial will be
19 granted in respect of the damages only and the verdict shall stand in
20 all other respects.

21 Swing First was awarded \$1,000,000.00 in compensatory damages on its claim for breach
22 of contract – tariff rates. *See Verdict Form 2(a), attached hereto as Exhibit A*. No evidence
23 whatsoever was ever presented during the trial (or at any time in this case) that could
24 conceivably support a verdict for compensatory damages in this amount. In fact, during its
25 closing statement, Swing First requested the sum certain amount of \$73,572.00 in damages for
26 this claim. *See Transcript of Closing Argument, p.29:3-32:4, attached hereto as Exhibit "B."*
Specifically, Swing First stated as follows during closing arguments:

So based on Mr. Ashton's calculations, we're asking you to award

1 Swing First Golf \$73,572 for its over payments to Johnson Utilities.
2 If we could take a look at this slide that's been created that sums up
3 the three amounts that we've talked about. These three amounts are
4 for those CAP over charges from 11 of '06 to 12 of '07 in the
5 amount of \$62,574, the effluent flooding overdeliveries – that's the
6 flood – in the amount of \$1818; the minimum bill overcharges, the
7 51 weeks at \$9,180, for **a total of \$73,572.00 that Swing First has**
8 **been overbilled by Johnson Utilities.**

9 *Closing Arguments Transcript 31:18-32:4. (Emphasis added).*

10 No evidence legitimately supporting any higher amount was presented by the Defendants
11 with respect to this claim. With respect to its breach of contract claim, Swing First asserted
12 claims for alleged overcharges with respect to three items:

- 13 • Alleged overcharges for CAP water delivered, for which Swing First argued it was
14 entitled to pay the effluent rate;
- 15 • Alleged overcharges regarding the flooding incident, the water of which Swing First
16 argued it should not have to pay; and
- 17 • Alleged overcharges regarding the meter that had been installed in the effluent line.

18 With respect to the first item, during Mr. Ashton's testimony, he compared the charges
19 for CAP water that had been actually delivered and used by Swing First to the charges for
20 effluent water. Swing First argued that because it wanted effluent, it should only have had to
21 pay for effluent regardless of the type of water that had actually been delivered. While Mr.
22 Ashton provided no rule, policy, or other foundation on which to base his opinion that Swing
23 First should receive CAP water at the effluent rate, he opined that as a result of his opinion,
24 Swing First was overbilled by \$62,874.00. Specifically, Mr. Ashton testified:
25
26

1 Q: And then finally what is the number in the last row of column 11 [on
2 Defendants' Trial Exhibit 65]?

3 A: In yellow?

4 Q: In yellow.

5 A: The number, it is \$62,874 and that's the amount that we overpaid Johnson
6 Utility.

7 Q: And is that the amount of Swing First Golf is asking for an award in this case?

8 A: I believe it is.
9

10 *March 14, 2012 Trial Transcript of the Testimony of David Ashton, p. 31:22-32:5,*
11 *attached hereto as Exhibit "C." See also Spreadsheet Designated as Defendants' Trial*
12 *Exhibit 65, attached hereto as Exhibit "D."*
13

14 With respect to the second item regarding the alleged flooding incident, Mr.
15 Ashton indicated that he had calculated, based upon his unsupported² estimate, that
16 approximately half of the water delivered in February 2008 related to the flood and
17 should not have been charged. *See March 15, 2012 Trial Transcript of the Testimony of*
18 *David Ashton, p 35:18 – 37:15, attached hereto as Exhibit "E."* The spreadsheet
19 prepared by Swing First regarding this item reflected alleged overcharges in the amount
20 of \$1,818.31. *See Spreadsheet designated as Defendants' Trial Exhibit 68, attached*
21
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23
24 ² Mr. Ashton testified that "I just had to make a simple estimation of what I thought
25 was the over delivery of water. And so I simply said 'perhaps it was half.'" *See March*
26 *15, 2012 Trial Transcript of the Testimony of David Ashton, p 37:11 - 14, attached*
hereto as Exhibit "E." (quotation marks in original.)

1 *hereto as Exhibit "F."*

2 With respect to the third item, Mr. Ashton testified that he believed that Johnson
3 Utilities had overcharged Swing First by overbilling the monthly minimum charge for
4 the Swing First Effluent line (which is based on the size of the water meter attached to
5 that line). Specifically, Mr. Ashton testified that Swing First had been improperly billed
6 at the rate of \$900 per month when it should have been billed at the rate of \$270 per
7 month. *See Exhibit "E," pp. 19:2 – 22:1.* Based upon his calculations he determined
8 that Swing First had been overcharged in the amount of \$25,480. During the trial, it
9 became apparent that Mr. Ashton had miscalculated, due to the fact that Swing First had
10 only been charged \$450 per month rather than \$900 on this account. *See Invoices*
11 *designated as Plaintiff's Trial Exhibit 22, attached hereto as Exhibit "G."* Based upon
12 the fact that Mr. Ashton had miscalculated the charge, Swing First reduced its request
13 relating to the alleged meter overcharges, and only sought \$9,180 at its closing
14 argument for this issue. *See Exhibit "B," p. 32:1 – 3.*

15 The alleged overcharges sought as an offset against Johnson Utilities' claims
16 totaled \$73,574.00, as specifically requested by Swing First in their closing arguments.
17 Thus, even taking at face value all of the evidence presented by Swing First (setting
18 aside any issues relating to legal foundation, whether or not the claims indeed existed,
19 or any objections on how Swing First calculated the numbers in the first place), there is
20 absolutely no evidence that could support a \$1,000,000.00 award on Swing First's
21 contract claim.
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As the \$1,000,000.00 is wholly unsupported by any evidence and in fact contradicts the evidence and demand during closing arguments that was presented by Swing First, this Court must award a remittitur with respect to this claim. Johnson Utilities, LLC hereby requests that this Court reduce the amount of damages for Swing First's breach of contract claim to *no more* than the requested amount of \$73,572.00.

CONCLUSION

For the reasons set forth above, this Court should remit the verdict on Swing First's claim for breach of contract and reduce the damages awarded to no more than the requested amount of \$73,572.00.

Respectfully submitted this 6th day of April, 2012.

SANDERS & PARKS, P.C.

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/s/ Michael L. Kitchen

Michael L. Kitchen

Attorneys for Plaintiff

Original of the foregoing electronically filed this 6th day of April, 2012 with:

Clerk of the Court

MARICOPA COUNTY SUPERIOR COURT

201 West Jefferson

Phoenix, Arizona 85003

1 Copy of the foregoing e-delivered this 6th day of April, 2012 to:

2 Honorable John Rea
3 **MARICOPA COUNTY SUPERIOR COURT**
4 101 West Jefferson
5 Phoenix, Arizona 85003

6 Copy of the e-mailed and mailed this 6th day of April, 2012 to:

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22 /s/ Valerie Lazzell
23 N:\WP50\JOHNSON\Swing First Golf\Swing First 2\Motion Reduction of Damages.wpd

EXHIBIT “A”

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

FILED
3-19-12
MICHAEL K. JONES, Clerk
By [Signature]
[Stamp]

Johnson Utilities, LLC, et al.

v.

No. CV2008-000141
VERDICT 2(a)

Swing First Golf, LLC, et al.

We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, as to Defendants/Counterclaimants' claim for Breach of Contract, find in favor of Defendants/Counterclaimants and award damages in the amount of

\$ 1,000,000.00 (1 million)

(1)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(2)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(3)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(4)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(5)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(6)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)
(7)	_____ (Signature)	_____ (Printed Name)	_____ (Juror #)

Joseph R. Cox
(Signature)
Joseph R. Cox
(Printed Name)
Foreperson

1
(Juror #)

EXHIBIT “B”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA.
IN AND FOR THE COUNTY OF MARICOPA

JOHNSON UTILITIES, LLC,
et al.,

Plaintiffs,

vs.

SWING FIRST GOLF, LLC.,

Defendants.

CV2008-000141

Phoenix, Arizona

Thursday

March 19, 2012

BEFORE THE HONORABLE JOHN REA
JUDGE OF THE SUPERIOR COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Closing Statements)

Prepared by:
Cindy Benner
Registered Merit Reporter
Certified Reporter #50319

ORIGINAL

1 overbilled them a couple hundred thousand dollars, but
2 they gave credits of \$130,000.

3 This piece I'm not going to go through in
4 any great detail. Mr. Kitchen brought up the fact that
5 Mr. Ashton relied on the Johnson Utilities' numbers when
6 he was creating his spread sheet. What choice did he
7 have? He doesn't know how much water he had. He wasn't
8 standing there with a bucket measuring out, that's five
9 gallons, here's five gallons. Yeah, he had to use Johnson
10 Utilities' numbers. But even according to those Johnson
11 Utilities' numbers, if we take out the pieces that they
12 were wrongful on, then there is an amount that's owed by
13 Johnson Utilities that they have still overpaid and have
14 still not given credit for.

15 So, yeah, Mr. Ashton doesn't have any faith
16 in the numbers that he's given to you, but they're the
17 numbers that were provided. What did he do to calculate
18 the amount that was past due? He took the amount of water
19 that was delivered, multiplied it by the effluent rate,
20 and got a fair number that he's been overbilled all these
21 years by Johnson Utilities.

22 Now, Johnson Utilities has said: Well,
23 you're not entitled to just get effluent. You don't get
24 any special consideration over our other customers. But
25 the evidence has shown that there's always been plenty of

1 effluent. Ever since they opened that plant, there's been
2 plenty of effluent for Swing First and the other
3 customers. But Johnson Utilities decided that they were
4 going to deliver CAP water anyway.

5 Well, why was that? Why did they deliver
6 that? In fact, Mr. Hodges testified: Hey, Johnson
7 Utilities doesn't even make any money on CAP water, three
8 or four cents per thousand gallons. That's all the profit
9 we're allowed to have. But then he talked about, oh,
10 well, yeah, that's not really the case. If we've over
11 ordered that CAP water, and then we don't use it, well,
12 we're going to lose money on that. That's a negative.
13 That's just a straight loss right off the bottom line.
14 We've got to write a check for that.

15 So instead of getting that negative, they
16 took that water that they ordered, and they delivered it
17 to Swing First, more expensive water, but that way,
18 Johnson Utilities can turn what would have been a negative
19 for them, because they over ordered, into a positive.
20 They can take that net loss and turn it into a net gain.
21 Sure, they're making more than three or four cents a
22 gallon on that, or per thousand gallons, excuse me.

23 Now, Mr. Tompsett said -- because he was the
24 one that was actually involved in this account -- well,
25 Swing First ordered that water. We wouldn't have given it

1 to them unless they had ordered CAP water. The question
2 he never could answer is, why would Swing First order CAP
3 water instead of effluent? It does the same thing. It's
4 irrigation water. It's there to turn the water (sic)
5 green.

6 Why would Mr. Ashton have ordered the more
7 expensive water? There's no benefit to it. Nobody has
8 been able to tell you of any benefit to the CAP water. So
9 Mr. Tompsett is going to have you believe that Mr. Ashton,
10 an educated businessman, looked at his largest annual
11 expense and decided, you know what? I want to increase it
12 by 30 percent for no reason at all. Yeah, let's order the
13 CAP water.

14 The fact is that there was never a CAP water
15 order placed. There hasn't been any sort of written
16 account of it. Mr. Ashton has testified he's never
17 ordered it, and there's no reason he would have.

18 So based on Mr. Ashton's calculations, we're
19 asking you to award Swing First Golf \$73,572 for its over
20 payments to Johnson Utilities.

21 If we could take a look at the slide that's
22 been created that sums up the three amounts that we've
23 talked about. These three amounts are for those CAP over
24 charges from 11 of '06 to 12 of '07 in the amount of
25 \$62,574, the effluent flooding over deliveries -- that's

1 the flood -- in the amount of \$1,818; the minimum bill
2 overcharges, the 51 weeks at \$9,180, for a total of
3 \$73,572 that Swing First has been overbilled by Johnson
4 Utilities.

5 The next claim is for unjust enrichment.
6 Now, unjust enrichment, this has to do with the management
7 of the Oasis golf course by Swing First. Yeah, it was a
8 dump. It was a dump when Swing First took over. They
9 went out and looked at it and realized it was a dump.
10 They specifically included in there, hey, we're not going
11 to be responsible for the groundskeeping. We'll consult
12 with you on it, but we're not going to be responsible for
13 it. We'll take care of the other pieces of it, the
14 management pieces of it.

15 So the agreement was made that Johnson
16 Utilities would pay Swing First with water credit. Now,
17 Swing First had no idea that that was illegal. They
18 assumed that if the utility company said, yeah, they could
19 do it, they could do it. Why would the utility company
20 enter into an agreement that was illegal for them?

21 George Johnson said: Oh, I didn't even get
22 that agreement. I had no idea that that agreement was in
23 place until after they had already started, except that
24 Mr. Ashton sent that e-mail in March, when they started in
25 May. So he knew exactly what he was getting into. He

1 still let him get started.

2 That agreement shows exactly what it was
3 that they were talking about. If Mr. Johnson had wanted
4 something different, he wouldn't have let him start
5 working on the Oasis golf course, or if their
6 understanding of the agreement was that polar opposite of
7 what Mr. Johnson's agreement was, he would have pulled
8 them off until they had gotten on the same page.

9 But if we look at the services that were
10 provided, Swing First personnel are on-site virtually
11 every day for six months. Swing First Golf made
12 recommendations. I find it interesting that they were the
13 exact same recommendations that the expert, Mr. Watkins,
14 said that he made to George Johnson.

15 Swing First Golf allowed Oasis to use its
16 liquor license, a valuable commodity. Swing First Golf
17 installed a point of sale system to track sales and
18 inventories, ironically a system that prevents loss, that
19 prevents employees from stealing.

20 Nobody stole from the Oasis. There hasn't
21 been any credible information about that. It was brought
22 up. It didn't happen. And Swing First remodeled the pro
23 shop, which allowed one person to operate the pro shop and
24 the snack bar, where previously they were separated, and
25 two people had to be there at all times. Swing First Golf

EXHIBIT “C”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHNSON UTILITIES, LLC, et al,))
)
Plaintiffs,))
)
vs.) CV-2008-000141
)
SWING FIRST GOLF LLC, et al,)
)
Defendants.)
_____)

Phoenix, Arizona
March 14, 2012

BEFORE: THE HONORABLE JOHN REA, JUDGE

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

TESTIMONY OF DAVID ASHTON

DEBORAH M. CROCI
Official Court Reporter
Certification No. 50419

COPY

1 didn't send it.

2 Q. And these payments that are shown on column
3 10, where are those taken from?

4 A. They are taken from the Utility.

5 Q. And again, those are found on Exhibit 45?

6 A. Exhibit 45; this document, yes.

7 Q. And then finally, could you explain for the
8 jury what we're doing -- what you're doing with column
9 11.

10 A. Well, I think the jury knows that column 11
11 is simply column nine -- column ten subtracted from
12 column nine then to get a positive number, the amount of
13 the overcharge or, excuse me, the overpayment.

14 Q. And some of those months it looks like an
15 overpayment and some of it looks like there is an
16 underpayment; is that correct?

17 A. Yes, that's correct.

18 Q. And for purposes of this exhibit, which are
19 the positive numbers?

20 A. The positive numbers where we were
21 overpaying are the numbers that are not in parentheses.

22 Q. And then finally, what is the number in the
23 last row of column 11?

24 A. In yellow?

25 Q. In yellow.

1 A. The number is \$62,874, and that's the amount
2 that we overpaid Johnson Utilities.

3 Q. And is that the amount of Swing First Golf
4 is asking for an award in this case?

5 A. I believe it is.

6 Q. Now, Mr. Ashton, I'd like to take you back.
7 We've talked a little bit about your education; you went
8 to Stanford for Graduate School.

9 Where did you go to school undergraduate?

10 A. BYU.

11 Q. And that again is --

12 A. Brigham Young University.

13 Q. All right. And why did you go, if you know,
14 to business school?

15 A. I don't know; my dad went to business
16 school. I guess I thought -- you know, I wanted to be in
17 business. I wanted to learn how to, I guess, get
18 training to better run a business and that seemed like an
19 appropriate step to take, and I thought that Stanford had
20 a good program for that where I could learn about, you
21 know, business management and entrepreneurship.

22 Q. And you mentioned an entrepreneurship. Were
23 you interested in being an entrepreneur?

24 A. Sure. I think for most of us, at some point
25 in our lives, we've thought that maybe it would be nice

EXHIBIT “D”

1	2	3	4	5	6	7	8	9	10	11
	Cap	Effluent	Total					Correct	Total/Actual	Total
								Bills	Payments	Overpayment
Nov-06	5,266,000	0	5,266,000	\$ 3,265	\$ 270	\$ 34.23	\$ 233.30	\$ 3,802	\$ -	\$ (3,802.45)
Dec-06	2,901,000	15,407,000	18,308,000	\$ 11,351	\$ 270	\$ 119.00	\$ 766.98	\$ 12,507	\$ -	\$ (12,506.95)
Jan-07	744,000	2,181,000	2,925,000	\$ 1,814	\$ 270	\$ 19.01	\$ 137.51	\$ 2,240	\$ 9,200	\$ 6,959.98
Feb-07	0	1,404,000	1,404,000	\$ 870	\$ 270	\$ 9.13	\$ 75.27	\$ 1,225	\$ 4,200	\$ 2,975.12
Mar-07	0	0	0	\$ -	\$ 270	\$ -	\$ 17.82	\$ 288	\$ 5,200	\$ 4,912.18
Apr-07	3,374,000	322,000	3,696,000	\$ 2,292	\$ 270	\$ 24.02	\$ 169.06	\$ 2,755	\$ 8,421	\$ 5,666.36
May-07	9,557,000	0	9,557,000	\$ 5,925	\$ 270	\$ 62.12	\$ 408.89	\$ 6,666	\$ 13,450	\$ 6,783.65
Jun-07	11,516,000	0	11,516,000	\$ 7,140	\$ 270	\$ 74.85	\$ 489.05	\$ 7,974	\$ 221	\$ (7,752.86)
Jul-07	13,521,000	0	13,521,000	\$ 8,383	\$ 270	\$ 87.89	\$ 571.10	\$ 9,312	\$ 5,250	\$ (4,062.01)
Aug-07	8,794,000	0	8,794,000	\$ 5,452	\$ 270	\$ 57.16	\$ 377.67	\$ 6,157	\$ 13,000	\$ 6,842.89
Sep-07	11,043,000	0	11,043,000	\$ 6,847	\$ 270	\$ 71.78	\$ 469.70	\$ 7,658	\$ 11,000	\$ 3,341.86
Oct-07	3,007,000	0	3,007,000	\$ 1,864	\$ 270	\$ 19.55	\$ 143.00	\$ 2,297	\$ -	\$ (2,296.89)
Nov-07	6,565,000	0	6,565,000	\$ 4,070	\$ 270	\$ 42.67	\$ 290.80	\$ 4,674	\$ 19,850	\$ 15,176.23
Dec-07	0	7,037,000	7,037,000	\$ 4,363	\$ 270	\$ 45.74	\$ 310.41	\$ 4,989	\$ 33,000	\$ 28,010.91
Jan-08									\$ 12,626	\$ 12,626.00
2006-07	76,288,000	26,351,000	102,639,000	\$ 63,636	\$ 3,780	\$ 667.15	\$ 4,460.58	\$ 72,544	\$ 135,418	\$ 62,876

Notes:

Volumetric Rate \$0.62/1000 gal.

Superfund Tax \$0.0065/1000 gal.

Transaction Privilege Tax

Until 10/07

After 10/07

0.066 * (monthly volumetric charge + monthly minimum bill)

0.067 * (monthly volumetric charge + monthly minimum bill)

EXHIBIT “E”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JOHNSON UTILITIES, LLC,
et al.,

Plaintiffs,

vs.

SWING FIRST GOLF, LLC.,

Defendants.

CV2008-000141

Phoenix, Arizona

Thursday

March 15, 2012

BEFORE THE HONORABLE JOHN REA
JUDGE OF THE SUPERIOR COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Testimony of Mr. David Ashton)

Prepared by:
Cindy Benner
Registered Merit Reporter
Certified Reporter #50319

ORIGINAL

1 Q. You were in the courtroom when Mr. Tompsett
2 testified; is that correct?

3 A. Yes.

4 Q. And did you see some photographs that he purports
5 to have taken of the golf course?

6 A. Yes, I did.

7 Q. And do you remember if he testified concerning
8 when he took those photographs?

9 A. Yeah, he said he took them -- well, in his
10 e-mail, which was sent on a Wednesday, he said he took
11 them yesterday, so on Tuesday, which would have been
12 February 5th.

13 Q. So that was three days after these photographs
14 were taken; right?

15 A. Yes.

16 Q. And was there still flooding on the golf course?

17 A. Yes, there was.

18 Q. I would like you to look at Exhibit 68, please.

19 Did you prepare this document?

20 A. Yes.

21 Q. And I wonder if you could describe the document.

22 A. It's simply a calculation of The Utility flooding
23 overbilling from February 2008 due to this water that
24 overflowed and flooded the 18th green or 18th approach.

25 Q. Were you charged for the water that was delivered

1 during the month of February by Utility?

2 A. Yes, I was, and we paid it.

3 Q. And you paid that.

4 MR. MARKS: With that, I would move for the
5 admission of the exhibit.

6 THE COURT: Any objection as to 68?

7 MR. BHATHEJA: Objection as to foundation.

8 THE COURT: Overruled. Exhibit 68 is
9 received.

10 MR. MARKS: If we could get that up and
11 published.

12 THE COURT: It is.

13 MR. MARKS: It's published, but not up.
14 It's our fault.

15 BY MR. MARKS:

16 Q. Now -- and we can move through this quickly.
17 This is February of 2008, is that right?

18 A. Yes.

19 Q. And the effluent usage is half of the effluent
20 usage for the month; is that correct?

21 A. That's correct.

22 Q. And then you just simply applied the charges,
23 like the jury has seen before.

24 A. Yes.

25 Q. And then you calculated -- you estimated that

1 half of the effluent that you took during February was an
2 overbill; is that right?

3 A. Yes.

4 Q. Why did you pick one half?

5 A. I thought it was the most equitable way to do it.
6 We needed very little water in February. I mean, it's
7 just not a high water use month. It's also not a very
8 long month. And there was obviously a significant amount
9 of water that overflowed the banks of the lake. You know,
10 in the absence of being able to get buckets and lift up
11 the buckets and pull the water off the grass and then
12 measure it, I just had to make a simple estimation of what
13 I thought was the over delivery of water. And so I simply
14 said, "Perhaps it was half." I didn't know any other way
15 to do it.

16 Q. The meter actually delivers in the lake; is that
17 right?

18 A. Yes.

19 Q. And there's no meter to measure how much water
20 escapes from the lake.

21 A. No. As Mr. Tompsett testified, once the water
22 goes into the lake, Johnson Utilities has done its job.
23 So they meter that water, and there's no way to measure
24 what goes out.

25 Q. And Johnson Utilities did its job in February of

1 BY MR. MARKS:

2 Q. If we could go to the first page of this
3 document, and this says at the top that this is Johnson
4 Utilities, LLC; is that correct?

5 A. Yes.

6 Q. And then on the lower page, it says "Tariff."

7 A. Yes.

8 Q. Can you scroll down, please? And who is this
9 document issued by?

10 A. George H. Johnson, managing member, Johnson
11 Utilities Company.

12 MR. MARKS: And go to the next page, if you
13 would, Mr. Nelson.

14 BY MR. MARKS:

15 Q. This has a series -- a statement of charges for
16 water services. Do you see that?

17 A. Yes.

18 Q. And what's the -- there's a series of rates. For
19 a three-inch meter, what's the rate that's shown there?

20 A. \$270.

21 Q. And for a six-inch meter?

22 A. \$900.

23 Q. And then what does it say in bold in the first
24 sentence below?

25 A. "The rate for use in addition to the minimum

1 stated above shall be the same for all sizes of meters."

2 Q. That's all I have on Exhibit 52.

3 I would like to see -- let me approach.

4 Mr. Ashton, I'm showing you what's been
5 marked as Exhibit 80. Was this document prepared by you?

6 A. Yes.

7 Q. And what's the purpose of this document?

8 A. It's meant to -- the objective is to demonstrate
9 the overcharges/overpayments -- overcharges from Johnson
10 Utilities, overpayments by Swing First Golf on effluent
11 minimum bills from January 2008 to the present time.

12 Q. And what's your -- do you have a conclusion of
13 the amount of the overcharges?

14 A. Yes, \$25,480.

15 MR. MARKS: Move for the admission of
16 Exhibit 80.

17 THE COURT: Any objection?

18 MR. BHATHEJA: No objection, Your Honor.

19 THE COURT: Exhibit 80 is received.

20 MR. MARKS: Can we get that published,
21 please?

22 THE COURT: It is published.

23 MR. MARKS: Thank you.

24 BY MR. MARKS:

25 Q. And then just very briefly, would you describe

1 for the jury what it is you have done here?

2 A. Yeah, I'll try to be quick. The first line of
3 text is the legal rate for a six-inch meter, which we were
4 charged from January 2008 to August of 2010. The number
5 of months is 32 for that. We were charged \$900 per month.

6 The second line, the rate was changed by the
7 Arizona Corporation Commission, applicable beginning
8 September 2010 to the present date, and the rate was
9 reduced from \$900 a month to 550.

10 Q. Stop there for a moment, please. On that, the
11 first line, this \$900 charge shows up each month on your
12 effluent bills through those dates?

13 A. Yes, it does.

14 Q. And then the \$550 charge shows up on your
15 effluent bills after those dates?

16 A. Yes, it does.

17 Q. Thank you. Now, if you would go on with the
18 final line.

19 A. The legal rate for a three-inch meter during all
20 of that period is \$270, as we talked about. So I simply
21 took the \$900 minus \$270 for those 32 months that are in
22 the first line and then added the \$550 minus the \$270
23 times the 19 months and came up with a total overcharge
24 that you see in yellow on the right for 32 months of
25 \$20,160, and for the following 19 months up to today of

1 \$5,320. So that then accounts for the total overcharges.

2 Q. Thank you, Mr. Ashton.

3 We had some testimony yesterday about a
4 gentleman named Gary Larson. Do you remember that?

5 A. Yes.

6 Q. What was your relationship with Mr. Larson?

7 A. We had a -- well, to refresh the jury's minds,
8 I'm the managing member of Swing First Golf, and
9 Mr. Larson was the on-site manager of Johnson Utilities in
10 Queen Creek. So, as you can imagine, we had a very frank,
11 but sometimes combative relationship, but he was the
12 person that I went to when we had -- that I went to first
13 usually when we had issues with Johnson Utilities, whether
14 it was -- no matter what the issue was, normally we would
15 go to -- either I or our manager would go to Gary first.
16 So I knew him reasonably well and had dealt with him a lot
17 of times, both in positive and also in very negative
18 circumstances.

19 Q. Now, you testified yesterday concerning some
20 conversations. I believe you testified that those took
21 place in 2007; is that correct?

22 A. Well, I spoke with Mr. Larson repeatedly from
23 sort of 2004 all of the way up into 2007.

24 Q. Now, in 2008, did you have an occasion to record
25 a conversation with Mr. Larson?

EXHIBIT “F”

Utility Flooding Overbilling - February 2008

	Effluent Usage	Volumetric Charge at Effluent Rate	Superfund Assessment	Transaction Privilege Tax	Total Overbilling
Feb-08	2,734.50	\$ 1,695.39	\$ 11.02	\$ 111.90	\$ 1,818.31

EXHIBIT “G”

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

05/31/10

00120362-02

06/15/10

\$9,391.36

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85143

|||||

00120362020009341364



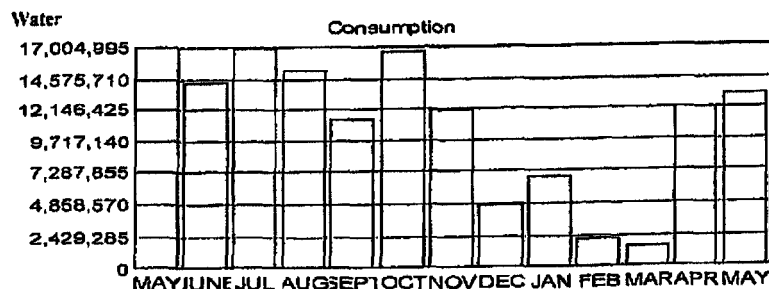
0012036202

Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	283734000	296944000	13210000	Normal Rd.	4/19/2010	5/17/2010
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$8,190.20
Water AZ. Privilege Tax			\$663.30	Water AZ. Superfund Tax		\$85.86
				Total Water Charges		\$9,391.36

Previous Balance	\$8,637.58		
Payment	(\$8,637.58)	Total Due	\$9,391.36

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02

05/31/10

53303

06/15/10

From 04/30/10 to 05/31/10 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

BILLING ID: 5310 00020536

JUL-0015

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

03/31/10

00120362-02

04/15/10

\$1,581.08

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85143

|||||

00120362020001581087

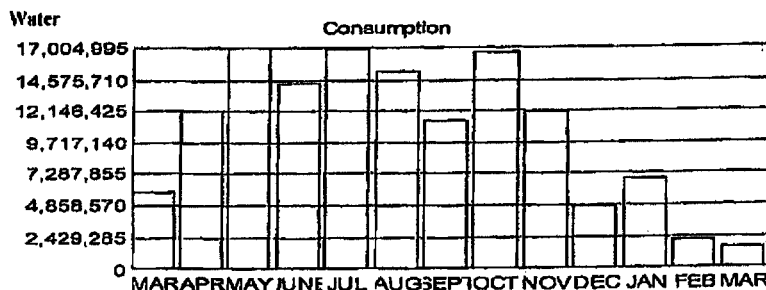


Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	269875000	271523000	1648000	Normal Rd.	2/12/2010	3/15/2010
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$1,021.76
Water AZ Privilege Tax			\$98.61	Water AZ Superfund Tax		\$10.71
				Total Water Charges		\$1,581.08

Previous Balance	\$1,915.77		
Payment	(\$1,915.77)	Total Due	\$1,581.08

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02

03/31/10

53303

04/15/10

From 02/28/10 to 03/31/10 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

BILLING ID: 5310 00020536

JUL-0017

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

01/31/10 00120362-02

02/15/10 \$5,148.16

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85143

|||||

00120362020005148164



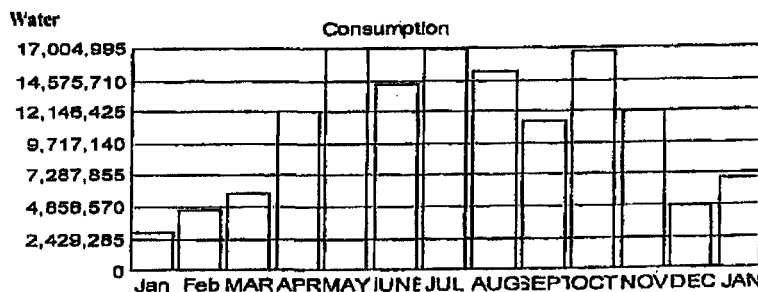
Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	260820000	267726000	6906000	Normal Rd.	12/22/2009	1/14/2010
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$4,281.72
Water AZ Privilege Tax			\$317.03	Water AZ Superfund Tax		\$44.89
				Total Water Charges		\$5,093.64
OTHER CHARGES						
Late Fee*			\$54.52			
				Total Other Charges		\$54.52

Previous Balance	\$3,634.63		
Payment	(\$3,634.63)	Total Due	\$5,148.16

PREVIOUS BALANCE DUE UPON RECEIPT TO AVOID DISCONNECTION
A late fee of 1.5% will be charged for payments not received by the 15th.
Make payments online at www.johnsonutilities.com
Sign up for EFT, automatic withdraw of full payment from your checking
account, contact Johnson Utilities for further details.
For automated phone payments call 1-866-277-0759.

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02 01/31/10

53303 02/15/10

From 12/31/09 to 01/31/10 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

BILLING ID: 5310 00020536

JUL-0019

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

11/30/09

00120362-02

12/15/09

\$8,702.81

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85143

|||||

00120362020008702819



0012036202

Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	244053000	256098000	12045000	Normal Rd.	10/23/2009	11/18/2009
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$7,467.90
Water AZ Privilege Tax			\$530.50	Water AZ Superfund Tax		\$78.29
				Total Water Charges		\$8,526.69
OTHER CHARGES						
Late Fee*			\$176.12	Total Other Charges		\$176.12

Previous Balance	\$11,741.24	
Payment	(\$11,741.24)	Total Due \$8,702.81

SWING FIRST GOLF

433 GOLF CLUB DR

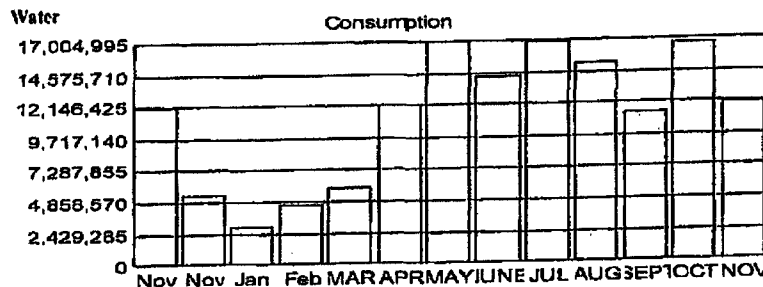
00120362-02

11/30/09

53303

12/15/09

From 10/31/09 to 11/30/09 = 30 Days



Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

JUL-0021

00120362-02

\$8,235.53

XXXXXXXXXXXXXXXXXXXX

[illegible]

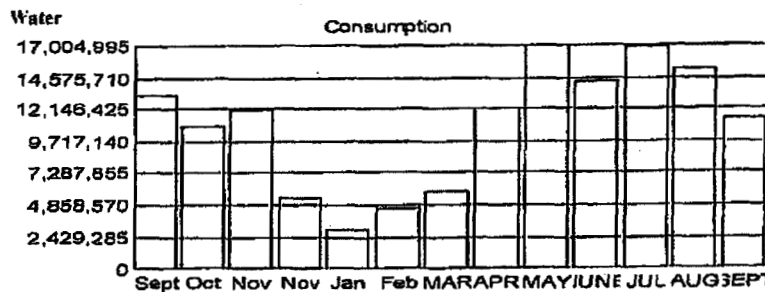
0012036202

WATER SERVICE

OTHER CHARGES

Previous Balance	\$10,606.96		
Payment	(\$10,606.96)	Total Due	\$8,235.53

433 GOLF CLUB DR



09/30/09

10/15/09

From 08/31/09 to 09/30/09 = 30 Days

Johnson Utilities

968 E. Hunt Hwy
Queen Creek, AZ 85143
(480) 987-9870

JUL-0023

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

07/31/09 00120362-02

08/15/09 \$11,733.95

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85143

|||||

00120362020011733959



Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	184005000	200851000	16846000	Normal Rd.	6/19/2009	7/23/2009

WATER SERVICE

Water Minimum	\$450.00	Water Usage	\$10,444.52
Water AZ Privilege Tax	\$729.93	Water AZ Superfund Tax	\$109.50
		Total Water Charges	\$11,733.95

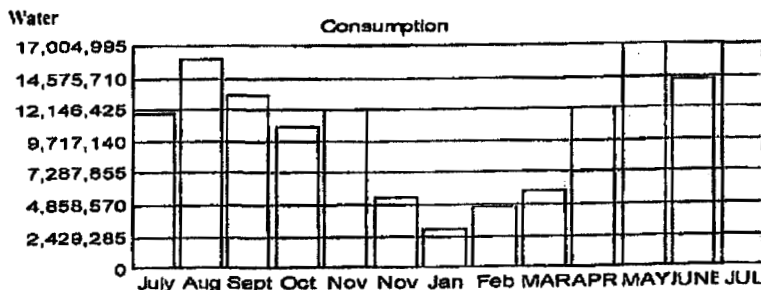
Previous Balance	\$10,015.08		
Payment	(\$10,015.08)	Total Due	\$11,733.95

PREVIOUS BALANCE DUE UPON RECEIPT

Make payments online at www.johnsonutilities.com
Sign up for Electronic Funds Transfer automatic withdraw of full payment from your checking or savings account, contact our office for further details.
For automated phone payments call Johnson Utilities at (480)987-9870 and choose option 1 or call NCO directly at 1-866-277-0759.

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02 07/31/09

53303 08/15/09

From 06/30/09 to 07/31/09 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

JUL-0025

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

05/31/09

00120362-02

06/15/09

\$20,553.07

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85243

|||||

00120362020020553075



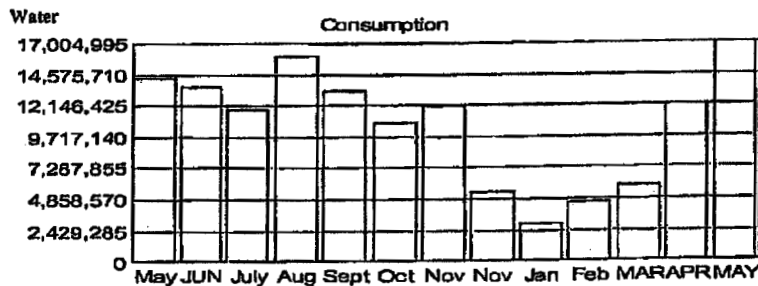
Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	152727000	169732000	17005000	Normal Rd.	4/17/2009	5/18/2009
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$10,543.10
Water AZ Privilege Tax			\$736.54	Water AZ Superfund Tax		\$110.53
				Total Water Charges		\$11,840.17
OTHER CHARGES						
Late Fee			\$128.76			
				Total Other Charges		\$128.76

Previous Balance	\$12,972.99		
Payment	(\$4,388.85)	Total Due	\$20,553.07

PREVIOUS BALANCE DUE UPON RECEIPT
Make payments online at www.johnsonutilities.com
Sign up for Electronic Funds Transfer automatic withdraw of full payment from your checking or savings account, contact our office for further details.
For automated phone payments call Johnson Utilities at (480)987-9870 and choose option 1 or call NCO directly at 1-866-277-0759.

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02

05/31/09

53303

06/15/09

From 04/30/09 to 05/31/09 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

JUL-0027

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

03/31/09

00120362-02

04/15/09

\$4,388.85

SWING FIRST GOLF
30761 N GOLF CLUB DR
QUEEN CREEK, AZ 85243



00120362020004388852



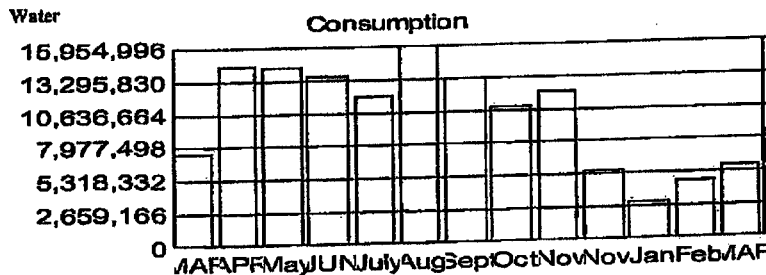
0012036202

Description	Meter Readings		Usage	Read Code	Readings Dates	
	Previous	Present			Previous	Present
	134745000	140596000	5851000	Normal Rd.	2/16/2009	3/17/2009
WATER SERVICE						
Water Minimum			\$450.00	Water Usage		\$3,627.62
Water AZ Privilege Tax			\$273.20	Water AZ Superfund Tax		\$38.03
				Total Water Charges		\$4,388.85

Previous Balance	\$6,008.00		
Payment	(\$6,008.00)	Total Due	\$4,388.85

SWING FIRST GOLF

433 GOLF CLUB DR



00120362-02

03/31/09

53303

04/15/09

From 02/28/09 to 03/31/09 = 31 Days

Johnson Utilities

968 E Hunt Hwy
Queen Creek, AZ 85243
(480) 987-9870

JUL-0029

APR - 9 2012

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9 Direct Phone: (602) 532-5720
Direct Fax: (602) 230-5053
10 E-Mail: Garrick.Gallagher@SandersParks.com

11 Attorneys for Plaintiffs/Counterdefendants

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

13 **IN AND FOR THE COUNTY OF MARICOPA**

14 JOHNSON UTILITIES, LLC; THE CLUB
AT OASIS, LLC; GEORGE H. JOHNSON;
15 JANA S. JOHNSON; BRIAN F.
TOMPSETT,

16 Plaintiffs,

17 v.

18 SWING FIRST GOLF, LLC; DAVID
19 ASHTON,

20 Defendants.

21 SWING FIRST GOLF, LLC, an Arizona
limited liability company; DAVID ASHTON
22 and JANE DOE ASHTON, husband and
wife,

23 Counterclaimants,

24 v.

25 JOHNSON UTILITIES, LLC, d/b/a
26 JOHNSON UTILITIES COMPANY, an

Cause No. CV2008-000141

**STIPULATION AND JOINT
MOTION TO STAY DEADLINES
FOR APPLICATIONS FOR
ATTORNEYS' FEES**

(Assigned to the Honorable Dean Fink)

1 Arizona limited liability company; THE
2 CLUB AT OASIS, LLC, an Arizona limited
3 liability company; GEORGE H. JOHNSON
4 and JANA S. JOHNSON, husband and wife;
5 BRIAN F. TOMPSETT and JANE DOE
6 TOMPSETT, husband and wife,

Counterdefendants.

7 The parties jointly move the Court to stay all deadlines for applying for attorneys' fees
8 and entry of judgment, pending resolution of other post-trial issues related to this case.
9 Plaintiff/Counter-Defendant Johnson Utilities has recently filed a Rule 59 motion for remittitur
10 which could impact the final results from trial. Swing First Golf may also file various post-trial
11 motions. As such, the parties stipulate and agree to stay all deadlines for applying to the Court
12 for attorneys' fees arising from their individual contract claims, pending the Court's decisions
13 on the parties' post-trial motions. The parties will file applications for attorneys' fees after
14 decisions have been rendered on Johnson Utilities' post-trial motions and on any other post-trial
15 motions filed by Swing First Golf arising from their individual contract claims. This stipulation
16 will act to preserve the Court's and the parties' resources during the pendency of the parties'
17 post-trial motions. No party is waiving their right to apply to the Court for attorneys' fees by
18 entering this stipulation and joint motion.

19 RESPECTFULLY SUBMITTED this 6th day of April, 2012.

20 SANDERS & PARKS, P.C.

21
22 By /s/ Anupam Bhatheja
23 Garrick L. Gallagher
24 Anupam Bhatheja
25 3030 North Third Street, Suite 1300
26 Phoenix, Arizona 85012-3099
Attorneys for Plaintiffs/Counterdefendants

1 ///

2 MARGRAVE CELMINS, P.C.

3
4 By /s/ Michael L. Kitchen
5 Michael L. Kitchen
6 Lat J. Celmins
7 8171 E. Indian Bend Road, Suite 101
8 Scottsdale, AZ 85250
9 Co-Counsel for Plaintiffs

10 CRAIG A. MARKC, PLC

11 By /s/ Craig A. Marks
12 Craig A. Marks
13 10645 N. Tatum Boulevard, Suite 200
14 Phoenix, AZ 85028
15 Attorneys for Defendants/Counterclaimants

16 LAW OFFICES OF SHAWN E. NELSON, P.C.

17 By /s/ Shawn E. Nelson
18 Shawn E. Nelson
19 19420 N. 59th Avenue, Suite B225
20 Glendale, AZ 85308
21 Co-Counsel for Defendants/Counterclaimants

22 Original of the foregoing e-filed this 6th day of
23 April, 2012 with:

24 Clerk of the Court
25 Maricopa County Superior Court
26 201 West Jefferson Street
Phoenix, Arizona 85003-2243

///

1 Copy of the foregoing e-delivered this 6th day
2 of April, 2012 to:

3 The Honorable Dean Fink
4 Maricopa County Superior Court
5 Old Courthouse
6 125 West Washington, Room 202
7 Phoenix, AZ 85003

8 Copy of the foregoing mailed on this 6th day of
9 April, 2012 to:

10 Craig A. Marks
11 Craig A. Marks, PLC
12 10645 N. Tatum Boulevard, Suite 200
13 Phoenix, AZ 85028
14 Attorneys for Defendants/Counterclaimants

15 Shawn E. Nelson
16 Law Offices of Shawn E. Nelson, P.C.
17 19420 N. 59th Avenue, Suite B225
18 Glendale, AZ 85308
19 Co-Counsel for Defendants/Counterclaimants

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22 Margrave Celmins, P.C.
23 8171 E. Indian Bend Road, Suite 101
24 Scottsdale, AZ 85250
25 Co-Counsel for Plaintiffs
26

By /s/ Donna K. Mitchell